

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

NORMAN POMALES,

Defendant.

•
•

•
•

•
•

•
•

•
•

•
•

•
•

CASE NO. 1:03-CR-00431-3

OPINION & ORDER
[Resolving Doc. No. [384](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In March 2006, this Court sentenced Defendant Norman Pomales to 240 months’ imprisonment for conspiracy to possess with intent to distribute cocaine and cocaine base.^{1/} Pomales now moves for a reduction in that sentence, *see* [18 U.S.C. § 3582\(c\)\(2\)](#); [United Sentencing Guidelines Manual \(USSG\) § 1B1.10 \(2011\)](#), pointing out that pursuant to the Fair Sentencing Act of 2010, the Sentencing Commission retroactively reduced the guidelines sentences for cocaine-base offenses.^{2/} [Doc. [384](#).] The United States opposes the motion. [Doc. [385](#).] The Court concludes that Pomales’s requested reduction is not “consistent with applicable policy statements issued by the Sentencing Commission,” [18 U.S.C. § 3582\(c\)\(2\)](#), and denies Pomales’s motion.

At Pomales's sentencing, the Court calculated a total offense level 40 and a criminal-history

^{1/}The Court also sentenced Pomales to 48 months' imprisonment (to be served concurrent with the conspiracy to possess with intent to distribute cocaine and cocaine base sentence) for use of a telephone to facilitate drug trafficking.

^{2/}The Court marginally denied Pomales's earlier pro se motion for a sentencing reduction. [Docs. [374](#); [367](#).] The Court assumes, without deciding, that the current motion is not barred by that earlier motion

Case No. 1:03-CR-00431-3
Gwin, J.

category IV, which resulted in a guidelines range of 360 months' to life imprisonment.^{3/} After applying the 18 U.S.C. § 3553(a) factors, the Court sentenced Pomaes to 240 months' imprisonment. According to the new (and retroactive) drug-table in [U.S.S.G. § 2D1.1](#), however, Pomaes's amended guidelines range is 262 to 327 months' imprisonment. Therefore, Pomaes says, the Court should resentence him with an "equally-proportionate variance . . . which equates to 174 months [imprisonment]." [Doc. [384](#) at 6.]

The Court has some authority under 18 U.S.C. § 3582 to reduce a previously imposed sentence. In particular, § 3582(c)(2) provides that

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . the court may reduce the term of imprisonment . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

[18 U.S.C. § 3582\(c\)\(2\)](#). Accordingly, § 3582(c)(2) authorizes the Court to reduce Pomaes's sentence only if (1) that sentence is "based on a sentencing range that has subsequently been lowered" and (2) "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.*

Regardless of whether Pomaes's sentence was based on a range that has subsequently been lowered, the reduction he seeks is not consistent with the Sentencing Commission's policy statements. That policy statement disallows (with one exception, inapplicable to Pomaes) a reduction of a defendant's term of imprisonment "to a term that is less than the minimum of the amended guideline range" [U.S.S.G. § 1B1.10\(b\)\(2\)\(A\)](#) Pomaes's 240-month sentence is

^{3/}The Court originally sentenced Pomaes to 360 months' imprisonment. [Doc. [223](#).] Pomaes appealed his conviction and sentence; the Sixth Circuit, while affirming the conviction, vacated and remanded for resentencing consistent with *United States v. Booker*, 543 U.S. 220 (2005). On remand, the Court imposed the 240-month sentence, which the Sixth Circuit later affirmed.

Case No. 1:03-CR-00431-3
Gwin, J.

already a term below that of the amended guidelines range of 262 to 327 months' imprisonment. Accordingly, a further reduction is inconsistent with this Court's § 3582(c)(2) resentencing authority, and the Court **DENIES** Pomales's motion for a sentencing reduction.

IT IS SO ORDERED.

Dated: June 21, 2012

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE